



# CHAPTER 90: CRITICAL AREAS UPDATE SEPTEMBER 29, 2016

PLANNING COMMISSION AND HOUGHTON COMMUNITY COUNCIL JOINT HEARING





# AGENDA

1. Staff Presentation
2. Open Public Testimony
3. Close Public Testimony
4. Questions and Discussion by the Planning Commission and Houghton Community Council
5. Houghton Community Council deliberates and makes recommendation to Planning Commission
6. Planning Commission deliberates and makes recommendation to City Council



## SUMMARY OF PROCESS

1. 10 public meetings held between January and July 2016
2. 3 open houses
3. Worked closely with Department of Ecology, PSE and other agencies
4. Mailed out notice, had a web pages and a listserv



# PRESENTATION

1. New code amendments since last study session
2. Comments from State Agencies and Muckleshoot Tribe
3. Final Draft Chapter 90
4. Next Steps

## CODE AMENDMENTS SINCE LAST STUDY SESSION

- ❑ **Restoration of Degraded Wetland or Stream** (pages 3, 34 and 38 of packet)
  - **Current code** requires restoration of degraded wetland and streams with development of site.
  - Added **same provisions** when full vegetative buffer is required (>1,000 sq. feet of new footprint)
- ❑ **Minor Code Amendments** (Attachment 2 – page 81-109 of packet).
  - Amend numerous chapters of the **Zoning Code**, including Chapter 5 Definitions.
  - Amend chapters of the **Municipal Code**, including Subdivision Ordinance.
- ❑ **Vegetative buffer at ratio of 1:1 for additions of less than 1,000 sq. ft.** (pages 54 and 75).
  - For any **tree removal**, replant two trees for each significant tree removed and three trees for trees over 24' in diameter

## COMMENTS FROM DEPARTMENT OF FISH AND WILDLIFE

### **Department of Fish and Wildlife Comments** (page 5 of packet and Attachment 3)

- ❑ Complimentary of new code.
- ❑ Why is **structure setback** requirement 10' and not 15'.
  - Current standard is 10' which is sufficient. Some cities require 10' while others require 15'.

## COMMENTS FROM DEPARTMENT OF ECOLOGY

### **Department of Ecology** (pages 5 and 6 and Attachment 4 of packet )

- ❑ **Wildlife corridor** should be provided through wetland buffers to adjacent areas.
  - Added requirement in Fish & Wildlife Habitat section if determined to be appropriate.
- ❑ **Financial security** should be held until other agencies approve release.
  - Security is for City's requirements - not other agencies and City will not hold up security release waiting for other agency.

## COMMENTS FROM MUCKLESHOOT TRIBE

### **Muckleshoot Tribe Comments** (pages 6, 37, 53 and Attachment 5 of packet)

- ❑ Use **interim stream typing** (WAC 222-16-031) that better addresses fish barriers.
  - Department of Fish and Wildlife did not suggest that the interim stream typing be used.
  - Chapter 90 uses WAC 222-16-030 standard typing system
  - All other jurisdictions currently use stream typing in WAC 222-16-030.
  - SMP uses same WAC 222-16-030 stream typing.
  
- ❑ Address **shading of streams** to prevent rise in water temperature .
  - Added provision for vegetating buffer standard that shading trees and plants be placed near the edge of stream to shade stream.



## KEY REGULATIONS IN CHAPTER 90 (PAGES 11-12 AND 24-31 OF PACKET)

- ❑ **Exempted** are activities and improvements from regulations because **no impact** to buffer.
- ❑ **Permitted** Activities and Improvements have **minor impacts** to buffer.
  - Require critical area report and Planning Official approval.
- ❑ **Exceptions** for Public Agency and Public Utilities
  - Applicable if cannot meet wetland or stream modification criteria but can meet exception criteria
- ❑ **Programmatic Permits** for Public Agency and Public Utilities
  - Agency can bundle similar permits

# WETLAND BUFFER WIDTH STANDARD (PAGES 12-13 AND 34-35 OF PACKET)

## Current wetland buffers in KZC 90

Wetland Type	Primary Basin	Secondary Basin
1	100'	75'
2	75'	50'
3	50'	25'

## Current wetland buffers in SMP

Wetland Category	Range of Buffer widths based on habitat score (feet)
I: Bogs	215
I: All others	125-215
II	100-200
III	75-125
IV	50

## New Chapter 90 Wetland Buffer Standards (Ecology BAS):

Width assumes buffer is well vegetated with native plants, and contains few invasive plants and no lawn or

Wetland Type	Buffer width (in ft.) based on habitat score			
	3-4	5	6-7	8-9
I: Bogs	190	190	190	225
I: All others	75	105	165	225
II	75	105	165	225
III	60	105	165	225
IV	40	40	40	40

# STREAM BUFFER WIDTH STANDARDS (PAGES 12-13 AND 34 OF PACKET)

## Current Stream Buffers in KZC 90

Stream Class	Buffer width for streams in primary basin (feet)	Buffer width for streams in secondary basin (feet)
A	75	N/A
B	60	50
C	35	25

## Current Stream Buffers applicable to annexation area in SMP

Stream Type	Buffer width (feet)
F	115
Np	65
Ns	65

## New Chapter 90 Stream Buffer Standards (BAS):

Width assumes buffer is well vegetated with native plants, and contains few invasive plants and no lawn or fill.

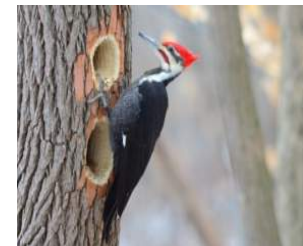
Stream Type	Buffer Width
F (contains fish)	100 feet
Np (No fish – perennial)	50 feet
Ns No fish – seasonal)	50 feet

# FISH WILDLIFE HABITAT CONSERVATION AREA

## **Fish and Wildlife Habitat Conservation Area** (pages 14 and 45 of packet)

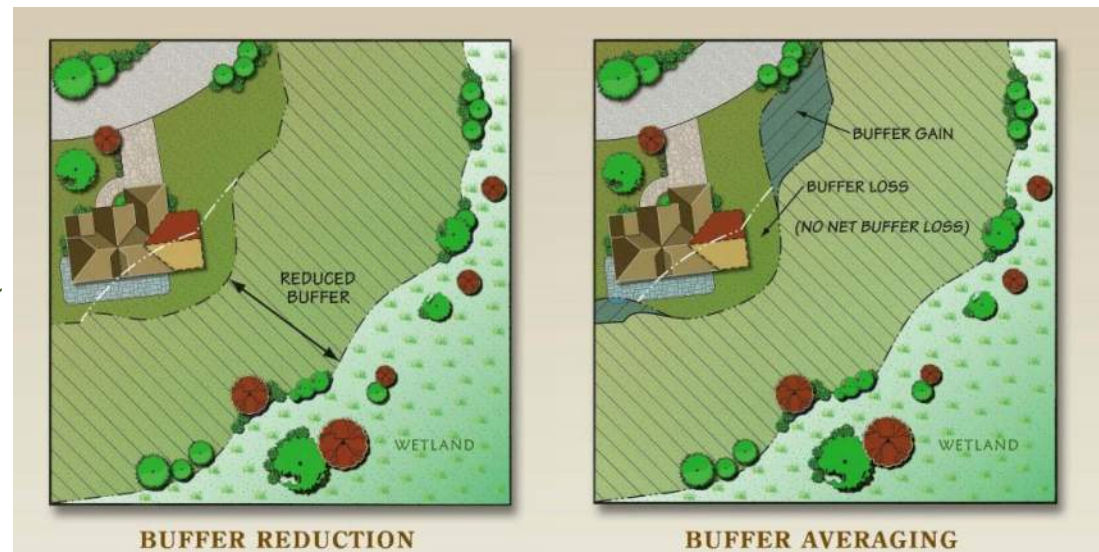
- ❑ **Federally endangered, threatened or sensitive species** as determined by U.S Fish and Wildlife Services and National Marine Fisheries.
- ❑ **State priority species** as identified by Washington Department of Fish and Wildlife (WDFW).
- ❑ Property containing or adjacent to **wildlife habitat** for one of these species must have a **management plan** prepared as part of development:
  - Seasonal restrictions on construction
  - Buffer widths that reflect sensitivity of habitat
  - Restrictions on access into habitat

*(Note that this provision will affect only a small number of lots)*



## BUFFER AVERAGING (PAGES 15 AND 51 OF PACKET)

- **Buffer Averaging**
  - Narrowest point is never less than  $\frac{3}{4}$  of required width and total area of buffer after averaging = area required without averaging.



# VEGETATIVE BUFFER STANDARD (PAGES 15 AND 53 OF PACKET)



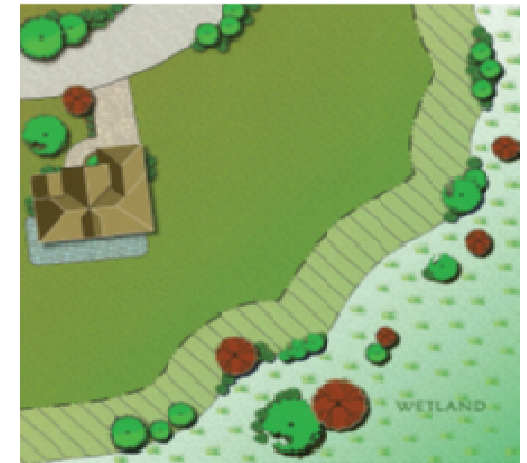
## Vegetative Standard

- **Native cover** of at least 80% on average throughout the buffer area with 2 out of 3 of the following strata of native plant species composing of at least 20% areal cover:
  - Multi-age forest canopy (combination of existing and new vegetation)
  - Shrubs
  - Woody groundcover or unmowed herbaceous groundcover
- Less than 10% **noxious weeds** cover using King County weed list (require removal of knotweed - very invasive)
- At least **three native species** each making up a minimum of 10% cover (for diversity)
- Removal of **lawn** (source of fertilizers, fecal coliform from pets and herbicides detrimental to wetlands and streams)
- **Allow alternative plan** for unique circumstances based on criteria and meets intent of vegetative standard.

## BUILDING SETBACK FROM BUFFER (PAGES 15 AND 55 OF PACKET)

- **Building setback from buffer** required so that buffer is not disturbed by the following:
  - Installation of improvements
  - Activities associated with improvements
  - Repair and maintenance of improvements
- Proposed Chapter 90 requires a **10'** setback from buffer (same as existing Chapter 90)

is



**Setback from wetland buffer  
is striped area**

# NONCONFORMANCES UNDER CURRENT CHAPTER 90

## Current Nonconforming Rules:

- Existing, legally installed, improvements are grandfathered.
- Maintenance and repair of those improvements is allowed.
- Replacement is **not** allowed.
- For casualty of 50% or less, can reconstruct. For casualty damage greater than 50%, **must make new structure conforming**.
- Expansion of nonconformance is **not** allowed



# NONCONFORMANCES UNDER PROPOSED CHAPTER 90

(PAGES 15, AND 73 OF PACKET)

## Proposed Nonconforming Rules under Chapter 90:

- **Same** - existing, legally installed, improvements are grandfathered.
- **Same** - maintenance and repair of those improvements is allowed.
- **New** - **replacement allowed** on same footprint and with same size.
- **New** –
  - Single family casualties, can do **total reconstruction**.
  - Other uses, only if damage is 50% or less valuation. More than 50%, then must be brought into conformance.
- **New** - **Expansion** of nonconforming structure is allowed.

# EXPANSION OF NONCONFORMING STRUCTURES

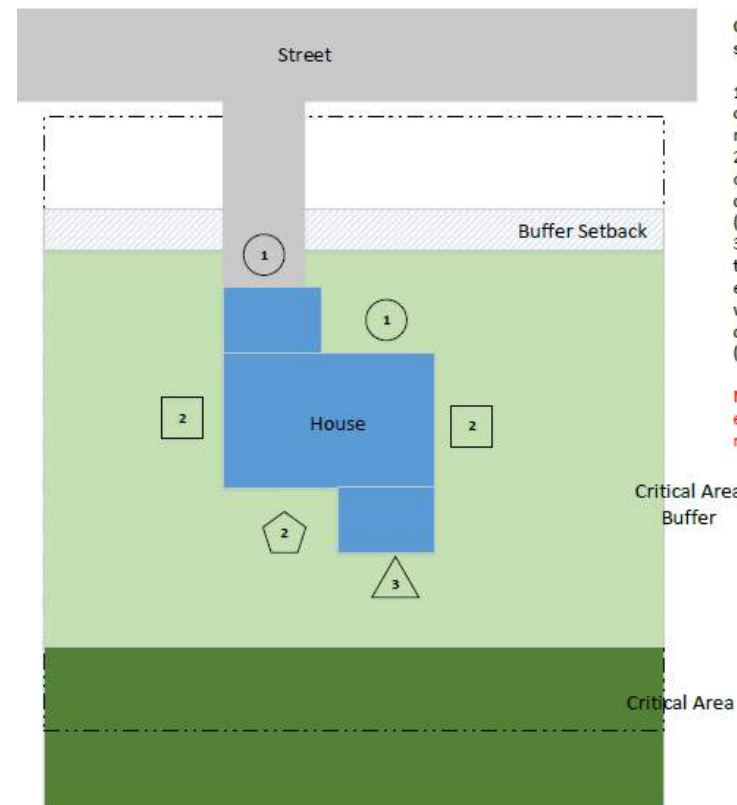
## Footprint expansion into buffer (page 75)

- 1,000 s.f. cap on opposite side (1)
- 500 s.f. cap if no further encroachment (2)
- 250 s.f. cap if further encroachment (3)
- Mitigate for 1,2,3 at 1:1 ratio. Replace every significant tree with 2, and 3 for trees >24" in diameter

### Notes:

- Expansion into critical area not permitted
- Minimum buffer width for (2) and (3) is 60% of buffer
- Only one time expansion permitted

Nonconformance Example – Full Buffer



Order of preference when entire structure is located in Buffer:

1. House expanded on side opposite the critical area (1,000 s.f. max)
2. House expanded on the sides only if the objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded further into the buffer only if objective of expansion cannot be accomplished with 1. or 2., but no closer to the critical area than the existing house (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended in all cases



## NEXT STEPS

- November 15, 2016: City Council study session
- December 13, 2016: City Council adoption
- January 23, 2017: Houghton Community Council final action
- February 2017: ordinance goes into effect



FURTHER QUESTIONS? FURTHER COMMENTS?

- **Questions?**
- **Comments?**

## LAPSE OF APPROVAL FOR REASONABLE USE EXCEPTION

- ❑ **Reasonable Use Exception: Lapse of Approval** (pages 4 and 72 of packet)
- Current **RUE** approval expires after **one (1) year** unless a complete building permit is submitted.
- Under new Chapter 90, critical area reports will be valid for **five (5) years** under Ecology guidance.
- Staff recommended that the lapse of approval be changed to **five (5) years** to be consistent with all other zoning permits, easier to administer and to match validity of critical area report .
- Planning Commission only recommended a lapse of approval for **two (2) years**. Stay with this or go with 5 years?